## PART XXVII.—FOREST RIGHTS OF INÁMDÁRS.

1. The following rules* for the management of forests in which the Izáfatdárs in the Thána Collectorate have a share have been sanctioned by Government on the distinct understanding that the Izáfatdár himself derives a revenue in which Government have a share from the 'forest produce' mentioned. If the Izáfatdár does derive a revenue from 'karvi' or other minor produce, Government, by the terms of the Izáfatdár's tenure, have a right to share in it, and there is no reason why that right should be foregone. But Government do not intend this rule to be wrested so as to make it imperative on Izáfatdárs to demand a revenue on such minor produce when the people have hitherto obtained it free from the Izáfatdár's forests, or to sanction implicitly new taxation of such minor produce in Government forests.

Government have no objection to these rules being made applicable to all Inámdárs who exercise forest rights and pay judi on them to Government, but before they are applied, the Conservator should ascertain from the Collector and the Legal Remembrancer that no legal objection can be taken by the Inámdárs.

With regard to Rule VII, it is observed that it is unnecessary to give an Izáfatdár, who cuts but little, unnecessary trouble, and on the other hand, when heavy cuttings are going on, more frequent examinations of accounts may be advisable. Similar arrangements can be made as regards the payment of the instalments of judi :—

Rule I.—At least two months before the commencement of any cutting in the forest, the Izáfatdár will deliver a yádi to the Mámlatdár of the táluka in which his village is situated to be forwarded to the District Forest Officer, stating the following particulars :—

(1). The species of trees, or descripton of other forest produce that he purposes to cut, *i. e.*, whether teak, blackwood, rywal (building timber), firewood, bambus, karvi, or other.

(2). The approximate amount of each kind or description, and the circumference and length of the trees and poles which he intends cutting.

(3). The limits within which the fellings are to take place, *i. e.*, whether the entire forest area of the village is to be operated upon or a certain portion of it only.

(4). The period or periods of felling: from what date to what date.

(5). Whether the Izáfatdár is going to cut the timber, &c., himself, and afterwards sell it either at once to a particular person or persons, or from

*Note.—It appears from the correspondence underlying these rules that they refer to those Izáfat villages which were brought under Gordon's Watan Settlement. As regards other villages to which this settlement was not applied, the Izáfatdárs did not acquire any forest rights in their holdings.

time to time as purchasers may be found, or whether the trees or other forest produce are to be sold standing in lump to a contractor, or to different purchasers, who will fell and remove the material at their own cost.

(6). If any contract or agreement have been entered into either for cutting and purchasing or for purchasing only, a copy of every such contract or agreement shall accompany the yádi, if the same be in writing, and if oral, the terms as to prices, quantities and other particulars shall be fully set forth in the yádi.

Rule II.—The Izáfatdár will issue a pass with every cart, raft or load of timber or other forest produce exported from his village, whether by himself or his servants, or by contractors or purchasers. Printed forms, with counterfoils to be retained by the Izáfatdár, will be supplied for this purpose by the District Forest Officer at cost price, in which the following details will be filled in under the signature of the Izáfatdár, or of his authorized agent:—

1. Species and description of forest produce, *i. e.*, whether timber, (and, if so, its kind,) firewood, bambus, karvi, &c.

2. Form and shape, *i. e.*, whether logs, rafters, beams or other.

3. Quantity, *i. e.*, cubical measurement or number of pieces.

4. Price paid, or to be paid, and name of contractor or purchaser, and date of his contract or agreement.

5. Distinguishing mark.

6. Destination.

7. Date when pass was granted, and how long it is to continue in force.

Rule III.—If any timber or other forest produce is removed from an Izáfatdár's village, except under cover of a pass duly filled in and signed as prescribed by the last rule, it shall be liable to seizure by any Forest or other Revenue or Police Officer, and to be disposed of as if it were the property of Government.

Rule IV.—The following accounts in connection with their forests will be kept by Izáfatdárs:—

(1). A stock account book showing in detail all the material felled and brought out of the forests, and how the same is disposed of, in Form A* hereto annexed.

(2). A Roz-kird or daily cash book, in Form B* hereto annexed, in which every money transaction connected with the forests of the village will be entered.

(3). A Ledger of the above in Form C.*

(4). Pass books in which shall be kept the counterfoils of all passes that have been issued,

*Not printed.

containing all the details required in the passes themselves.

(5). A memorandum-book of the date and terms of every contract or agreement, either written or verbal, entered into by the Izáfatdár for sale of forest produce, with the names and residences of the contractors or purchasers.

(6). Receipts shall be taken and kept for all disbursements, and shall be granted for all sums received, and duplicates of the latter shall be kept and filled in chronological order.

Rule V.—The above accounts will be kept by the Izáfatdár in person or by an agent appointed and paid by him, who should be provided with a power of attorney from the Izáfatdár to collect monies and issue passes on his behalf, a copy of every such power of attorney being forwarded as soon as the power is executed to the District Forest Officer for his information.

Rule VI.—The accounts will be closed and balanced at the end of every official year, *i. e.*, new accounts will be opened on the 1st April of every year, and closed on the 31st March of the following year.

Rule VII.—On the dates noted in the margin or on such other dates as the Collector and Conservator may appoint, the Izáfatdárs will either bring or send by their authorized agents to the táluka kacheri all the accounts required to be kept by Rule IV fully made up and complete to date, together with the originals of any written contract or agreement into which they have entered for the sale of forest produce. The accounts will then be compared and examined by the Forest Inspector of the táluka and the Mámlatdár, in conjunction with the Izáfatdár or his authorized agent, and if found correct, the amount of judi payable to Government will be ascertained from them, and recorded in the Roz-kird under the signatures of the Mámlatdár, the Forest Inspector and the Izáfatdár or his agent. In the event of any dispute as to the correctness of the accounts, a reference will be made to the Collector by the Mámlatdár, who will forward the written explanation or objections of the Forest Inspector, and of the Izáfatdár or of his agent, together with his own opinion as to the points in dispute.

1st March ... }
1st July ... } of every year.
1st December ... }

Rule VIII.—The judi shall be paid by the Izáfatdár or his agent into the Mámlatdár's Treasury to the credit of the Forest Department within 7 days after the amount due has been determined.

Rule IX.—The Collector of the District or Assistant Collector, the Conservator of Forests, the District Forest Officer, the Táluka Forest Inspector, or the Mámlatdár shall be at liberty to call for and examine the Izáfatdár's accounts in his village at any time when any such officer may think fit to do so, and the Izáfatdár or his agent shall render

every assistance in his power towards this work, by producing his books and papers and explaining items.

Rule X.—The Conservator of Forests, acting under the orders of Government, will appoint as many Rakhwáldárs, or other forest subordinates, as he may from time to time think proper in each Izáfatdár's village, in order to protect the interests of Government, the salaries of all such servants being disbursed by Government; and no objection or resistance shall be offered by the Izáfatdár or by any of his servants, contractors or purchasers to the performance by any such Rakhwáldár, &c., of the duties assigned to him.

(G. R. No. 6770, dated 2nd December 1875.)

2. The rules sanctioned in Resolution No. 6770, dated 2nd December 1875, ought, if worked with care and consideration for the position of the Izáfatdárs, to prevent any serious difficulty in the future, unless indeed actual fraud is attempted against Government. Government can only claim a share of the Izáfatdár's actual income from the forests, and as the management of the forests has been resigned unreservedly into their hands, the Forest Department will not be justified in interfering in any way with a view of securing either a more economical or a more profitable management.

But if any Izáfatdár fails either to pay what is due from him or to render a true and fair account of his income from the forest, a suit will lie at any time to compel him to do so. And from the time the above-mentioned rules were communicated to the Izáfatdárs a suit will lie to compel them to produce the accounts, &c., therein prescribed, or to recover damages in case of failure.

But it would not be advisable to institute a suit in any case without serving upon the Izáfatdár, in the first instance, a written notice fully setting forth what is required of him, and allowing him a reasonable time for compliance. He should also be informed that, in the event of his failure to do what is required, legal measures will be resorted to to compel him to do so. In such a case as that of the Izáfatdár's making deductions in his account which the Conservator considers unauthorized, he should be called upon to furnish details, and a statement of his reason for making the deduction, and then, if it is thought that he is in the wrong, he should be so informed, and if he does not yield, a written notice may be served on him as stated above. (L. R. No. 426, dated 1st May 1876; *vide* G. R. No. 2867, dated 12th idem.)

3. Government are entitled to calculate judi on the Izáfatdár's actual income from his forests, and not upon the Forest Department's estimate of their value. The difference between the value of the actual outturn of wood and the price paid for it by the purchaser to the Izáfatdár, is the purchaser's profit on the transaction; with that Government

have nothing to do. A gross discrepancy between the actual value and the selling price would, of course, give rise to a suspicion of fraud which would necessitate care on the part of Forest Officers in ascertaining whether the transaction was a *bonâ fide* one or not. It should be remembered, however, that the Courts never presume fraud, but always require distinct proof of it.

(L. R. No. 594, dated 24th June 1876; *vide* G. R. No. 3866, dated 5th July 1876.)

4. In cases where at the time of the settlement forest rights had been specially reserved, and were not in the enjoyment of the Inámdár, he should be held to have no claim whatever to them. In such cases the Collector may, if he thinks fit, either retain the forests on account of Government, or else sell them for their full value to the Inámdár. The Collector will exercise this discretion only after consultation with the Forest Officers.

In cases where the Inámdár has at the time of settlement exercised rights of forests, and the land has not been specially set apart for valuation, according to Rule 2 of Section 2 of (Bombay) Act II of 1863, then the settlement should be made according to the survey assessment, irrespective of the value of the trees, which should be held to belong unreservedly to the Inámdár.

In cases where the Inámdár has at the time of the settlement exercised forest rights, and the land has not been surveyed and assessed, but has been reserved for special valuation,* then in making the settlement the value of the land for purposes of cultivation, together with the value of the forests growing thereon, should be taken into consideration.

Cases that have already been finally decided are not to be interfered with.

(G. R. No. 1796, dated 11th May 1867; and S. of S. No. 7, dated 31st August 1867; *vide* G. R. No. 3538, dated 17th October 1867.)

5. Where the right to the trees has hitherto unquestionably belonged to Government, then they should be either felled and sold, or disposed of in any other way the Conservator may advise. Inámdárs or others who attempt to make away with trees of this description should be criminally prosecuted.

In cases where the absolute right of Government in the trees cannot be established, there appears no remedy against an Inámdár who refuses the settlement as regards trees when the summary settlement of the land revenue of the village has been already effected.

(G. R. No. 1044, dated 14th March 1867.)

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* *Note.*— Land which yields revenue both from cultivation and from forest produce is clearly of such an exceptionable character as not to be assessable under the survey rules, which do not provide for forest revenue being taken into account in assessment of land. (G. R. No. 5518, dated 19th August 1887.)

6. The following rules for regulating forest rights in the alienated villages in the Panch Mahâls were approved by Government. These are not detailed rules for the management of the forests, but are general rules to instruct alienees as to their exact position and to let Revenue Officers also understand this :—

(1). For forest purposes alienated villages in the Panch Mahâls are divided into three classes :—

I. Villages in which there is no forest.

II. Villages in which there are forests, but the forest rights in which have been conceded by sanad to the alienee or the lands of which, not the revenues merely, have been granted to the alienee.

III. Villages in which there are forests and in which neither forest rights nor the land has been conceded by sanad to the alienee.

(2). With the trees in Class I, no interference by Government officers is to be allowed except to prevent trees being cut and carried in such a manner that might lead to robberies in neighbouring preserves.

(3). With the forests in Class II, Government Officers should not interfere in any way except to enforce the rules given below, or other rules duly promulgated.

(4). As regards Class III, as the alienees have no right to the forest lands nor to anything growing thereon, the forests belong exclusively to Government and are to be managed as ordered in the following rules.

(5). Forests include all lands classed as reserved and protected forests with the sanction of Government.

(6). Government will not interfere with the enjoyment of the usufruct of forest produce by alienees on lands not declared to be forests under the preceding rule, except in the case of trees or classes of trees once for all specially reserved.

(7). In villages coming under Classes I and II, alienees may cut wood and timber in small quantities for their own use at pleasure, but if any alienee wishes to cut any large quantity of wood, or wood of the value of Rs. 30 or upwards, he must intimate to the District Forest Officer his intention in writing one month before he intends cutting, stating—

(*a*) The kind of timber he means to cut.

(*b*) The amount he intends to cut.

(*c*) The probable value of the same.

(*d*) The purpose for which it is to be cut.

If the wood is for removal to another village, the alienee must apply for and obtain a pass from a duly authorized officer before such wood is moved from the forest in which it is cut. Such

application shall, in addition to the above particulars, mention the destination to which the wood is to be moved. The pass will specify the quantity of wood to be removed, its description, the route by which it is to be carried, and to whom the pass is to be returned. Any failure to attend to this rule, or to conform to the conditions of the pass, will render the parties concerned in the removal liable to the penalties prescribed in the Rules under Chapter VIII of the "Indian Forest Act, 1878."

(8). The proprietor of any alienated village entitled to exercise forest rights who may wish to do so, shall provide himself with

(*a*) A brand for stamping wood, which must either be obtained through the District Forest Officer, or be submitted to him for approval, in order that the brand may be registered.

(*b*) A pass-book which will be supplied by the District Forest Officer. This pass-book to consist of pages with counterfoil, which latter, on passes being issued by an alienee, must be retained in his possession and must, on demand, be produced before the District Forest Officer for comparison with the passes.

(9). When an alienee sells wood in his own village for removal elsewhere, he shall issue for each cart or set of carts, or for each beast of burden or set of such beasts of burden in one party, a pass specifying the quantity and description of wood sold, the jungles from which it has been cut, the route by which it is to be taken, and the náka by which it is to pass and at which the pass is to be delivered. He shall likewise brand each log, rafter, plank, &c., exceeding (3) three inches in diameter or width with the brand sanctioned or issued by the District Forest Officer under Rule 8, unless exemption is specially granted by the District Forest Officer.

(10). Further rules regarding the removal, &c., of wood from these forests will be found in the rules under Section 41 of the Indian Forest Act, and penalties for disobedience of Forest Rules are also therein set forth.

(G. R. No. 952, dated 22nd February 1879.)

7. The following memorandum prepared by the Remembrancer of Legal Affairs, showing the opinions and conclusions of Green, J., and West, J., upon the various questions of fact and of law in the Kánara Forest Case, and the line of argument and the reasons which led to that suit being determined in favour of Government, was circulated to the Commissioners, Collectors, Conservators, &c. :—

Nature of the claim.

(1). The plaintiff's principal object in instituting the suit, which was filed on 21st July 1870, was to recover possession of four tracts of forest land (esti

mated by one of the witnesses at about 320 square miles), from which, he averred, he had been wrongfully ejected in execution of an order issued by the Collector on the 20th March 1861, directing that he should be prohibited entirely from cutting or cultivating *kumri*, because his claim to the *kumri* had been rejected by the higher authorities.

(2). Of the four forest tracts the first was in the village of *Goera*, the second in the village of *Kaignád*, the third in the hamlet of *Báli*, and the fourth in the village of *Bhairé*, and they are alluded to in the judgments of the Court under these names respectively.

(3). The plaintiff claimed to be the proprietor of these tracts, of the first three under *sanads* granted to his ancestors or predecessors in title by the former Government, and of the fourth in virtue of long-continued enjoyment (*i.e.*, for 40 years previous to the date of the plaint) "giving or showing right of ownership." He admitted his liability to enhanced assessment under the general revenue law, and, apparently, also the right of Government to take the more valuable kinds of timber (*e.g.*, teak, blackwood, jackwood, poon and sandalwood) from the forests, but, with these exceptions, he claimed full rights over the forests, and in particular

(*a*) that he and no other had the absolute right to have *kumri* carried on within the limits to which his claim related;

(*b*) that he and no other had a right to cultivate, or give in cultivation, jungle land as rice land within the said limits; and

(*c*) that he and no other had a right to cut and dispose of timber.

(4). The evidence as to the three sanads has been most elaborately reviewed by Mr. Justice West, and the general conclusions arrived at both by him and Mr. Justice Green are stated by the latter as follows:—

Title under sanads not established.

(*a*) That it has not been established that they were executed by any person having authority to execute such documents;

(*b*) That circumstances show that these sanads either were not in existence 40 years ago, or, if in existence, that they were suppressed by those under whom the plaintiff claims;

(*c*) That they have never been recognized as valid and binding by any superior officer of the British Government, or been made the foundation of the revenue relations between the plaintiff or his predecessors in title and Government, but that, on the contrary, such revenue relations have been regulated as if the *sanads* did not exist.

(5). The effect of the suppression of the sanads is stated by Mr. Justice West in the following passage :—

"If, having an interest in the land, he chose to forego that interest for 30 years in order to avoid payment of the stipulated rent, he could not at the end of that time come forward and get the interest resuscitated after benefiting so long by its suppression.* * * He would * * have to be treated as having surrendered his lease. More especially is this the case after the notification issued by Mr. Reade in 1811.† Had Sadáshiv (*i.e.*, plaintiff's predecessor in title) then asserted his right, as he was invited to do, he would have been made responsible for the full assessment. By holding back he escaped it; and having gained that advantage by suppressing his lease, a surrender would, on the principle of *Balfour* v. *Weston*, be presumed to prevent his afterwards benefiting again by asserting it."

Prescriptive right to Bhairé forest not proved.

(6). As regards the Bhairé forest, the plaintiff's claim rested simply on its inclusion within the *geni varg* No. 23 of that village. The plaintiff averred that this *varg* had been transferred to him by the former *vargdár*, and although this contention was questioned by the Collector, the Court held that there was no reasonable doubt that the plaintiff was "the person really in occupation of the *varg*," and that "in that character he was dealt with by the Government officers in transactions connected with the *kumri* cultivation of some portion of the forest." But the absence of good evidence of possession and enjoyment of any particular area of the Bhairé forests previous to the year A.D. 1842, when the plaintiff's user was, as will be hereafter explained, "cut down to the employment for *kumri* of lands that had been customarily thus cultivated" was held to prevent the Court's determining that any part of those forests belonged to the plaintiff.

(7). But the plaintiff's pleaders sought to maintain the proposition that quite irrespectively of his alleged title to the forests under sanads or otherwise, "the proprietary right of the plaintiff in the forests claimed is established, and, if not created, yet is evidenced, at any rate, as against Government by the fact that the plaintiff and those under or in succession to whom he claims have from the commencement of the British dominion been charged with, and have paid the assessments called *kumri* assessment (*kumri-korláya*), pepper-assessment and *farmaish*."

Proprietary right of Government to waste lands.

(8). West, J., held that by Hindu law and usage, *vargdárs* were not constituted owners of any definite forest lands where they had not reclaimed them to cultivation. By Mahomedan law, forest lands which had not

† "In 1811 the Collector Mr. Reade published a notification that sanads and writings relating to lands and *vargs* not brought forward and recorded in the accounts of the next *jamábandi*, would never afterwards be recognized."

been obtained by an application, on an undertaking for cultivation, remained the property of the State, and although perhaps private property might, according to that law, grow within the State under the acquiescence of the Government, still such acquiescence to constitute a permanent right must needs have been an acquiescence in an occupation apparently meant to be permanent, and could not be implied from the levy of a rate on a casual and desultory use of the soil. Under British rule, West, J., held "the principle from which we must start is that waste lands belong to the State." Green, J., further observed that the fact of the plaintiff putting forward sanads as the root of his title to the greater portion of the property claimed "is an admission that at the date of those alleged *sanads* the then Government had the power to make the grants in question," *i.e.*, that the forests to which they relate then belonged to the Government.

Pepper-assessment.

(9). With regard to pepper-assessment, Green, J., finds that pepper-creepers were either grown in enclosed or defined places, or that they grew wild in the forests. "The cultivation or gathering of pepper in the forests in question in this suit does not appear to have been a matter of any moment in recent times at least;" but although in the case of pepper-assessment "imposed on pepper groves or gardens, (*i.e.*, enclosed or defined places containing pepper-creepers), it may well be contended that it is an assessment on *land*," Green, J., was of opinion that when imposed in respect of pepper-creepers growing wild it involved "at the most a right to gather the produce of such creepers as there might be in some more or less undefined tract."

*Farmaish.*

(10). "*Farmaish*" is found to be a money commutation "for vegetable produce formerly supplied in kind by the Government tenants," or "for presents of vegetables or like things customarily made by owners of property" to rájás or to Government officials; and being of this nature an entry of it in a *varg* could not, in Green J.'s opinion, involve any estate or interest in land.

Plaintiff's argument as to effect of payment of *kumri* assessment.

(11). But pepper-assessment and *farmaish* are comparatively unimportant items. The principal issue of the case concerned the *kumri-korláya or kumri* assessment. The argument for the plaintiff was—speaking generally—that payment of *kumri* (and pepper) assessment shows *ownership* in some forest at least, and that as he is the owner of the only *vargs* in the villages and hamlet to which his claim relates, in respect of which such assessment was charged, he is entitled to all waste ground and forest or jungle—in fact to all the

land not regularly cultivated as rice or garden by others within the limits, respectively, of those villages and hamlet.

Origin of *kumri* cultivation.

(12). West, J., after referring to the fact that in the early years of our rule so far from there being any desire on the part of Government to guard the forests against diminution (except as regards teak and blackwood), or unwillingness to deprive itself of its proprietary rights, waste lands "were regarded as of little more value than the air or water" and "for a long series of years they were looked upon as of so little importance that it did not signify by whom they were held," and "any rent however small" that could be obtained for them was "considered as so much gained," enters upon a description of the history of *kumri* cultivation.

(13). "In a thinly populated region of forests like Kánara it was to be expected," he says, "that a system of temporary culture would spring up, which taking the cream of its fertility from a spot enriched with the ashes of the burnt timber, transferred its operations in the next season or next but one, to some new and unexhausted field." Various authors are then referred to, to show that a similar system obtains, or has obtained, in European countries, and the account given of it in A.D. 1830, by "a remarkably* well-informed" Shirastedár of the Collector of Kánara is quoted as being important on account of its having been penned "at a time when the necessity or advantage of checking *kumri* cultivation had not yet occurred to the Government or its officers." A portion of this passage it will be useful to transcribe here. The Shirastedár says :—

*Vide* p. 537.

"The caste of people who cut the jungle and cultivate *kumri* are the kunbis, who live together in the jungles. These people clear a spot in the jungles and cultivate it with paddy, dhál, castor-oil trees, &c., for one or two years, and they are taxed according to the established custom of the village to which the jungle may belong. A spot so prepared will only yield produce for one or two years, but will not again produce for the next ten years. The jungle must be allowed to grow upon it again, and when it may be desired to bring it under cultivation, the jungle must be cleared as before. These people, therefore, desert the spots, and clear and cultivate others. It is not customary for a person wishing to cultivate *kumri* to make a *darkhást* describing the *chakbandy* (boundary) of the lands he wants, or for him to obtain any order or *patta* for it. These people obtain their livelihood by clearing the jungle and cultivating *kumri*, and this is their constant occupation. They cut and cultivate as they please. After they have cleared a spot and sown it, the Tahsildár collects from them the tax payable according to the custom of the village. In some places this tax is fixed at so much for a couple (man and woman) or so much for a man alone. In others it is fixed according to the number of bill-hooks or hatchets they make use of in clearing the jungle, there being a fixed rate of payment on each bill-hook and another on

each hatchet. Thus these people must be considered as *hangámis* (temporary) and not as fixed cultivators. If these kunbis should clear away jungle and cultivate *kumri* within the limits of a rayat's varg, they pay the vargdár the tax upon it.

"There is no separate *beriz* fixed on a *varg* under the head of *kumri*. The *beriz* is determined with reference to the whole *varg*, and the annual settlement is not made so much for *kumri* and so much for other items. It would be necessary for the future to ascertain how many persons cultivate *kumri* in the Sarkár jungles, and to prepare an account of the *bijwari* of the land so cultivated by them on estimate."

(14). Green, J., on an examination of the *jamá-bandi chittas** recorded in the suit found that out of the 74 times, or thereabouts, in which an amount is entered in the *varg* specifically in respect of *kumri* or *kumri-korláya*, that amount is made up in 66 instances of so many sums of 2 falams 8 tahas (annas) or of 1 falam 4 tahas, these being the rates which were assessed in respect of *kumri* cutting per knife used, *i.e.*, in respect of a man and wife wielding a knife 2 falams 8 tahas were reckoned, and in respect of a single man 1 falam 4 tahas, and that in the remaining 8 instances the impossiblity of dividing the amount into such sums can be accounted for. This fact is accepted by the learned Judge as "an indication that the amount only represents so many knives wielded, as the case may be, by a married pair or single man." This amount was, moreover, he found, "increased when a new tenant or other individual took up *kumri* cultivation under a *vargdár* whilst the *shist* (assessment) on the regular cultivation of the *vargdár*, as distinguished from *kumri*, was fixed. Further, whilst in the case of a *vargdár's* regular cultivation the subject of assessment was so much cultivated land, in the case of *kumri* and wild pepper no localities are referred to as the subject of assessment, so that "in the case of *kumri* the subject of assessment is not, so far as appears on the face of these accounts, so much land or the produce, as such, of land, the assessment is an amount fixed with reference to, and in that sense upon, such and such a number of knives wielded by persons cutting down forest for *kumri* cultivation."

Green, J.'s views as to nature of *kumri* assessment.

(15). "Originally", Green, J., thinks, "*kumri* assessment was entered in *vargs* only as incidental to rice or garden cultivation;" *kumri* assessment entered in a *varg* meant nothing more than a charge to a *vargdár* holding rice or garden ground in consideration of allowing him to send so many cutters into the forests near the *vádis* (hamlets) where he or his ryots lived." "The cutters were * * enabled by the *vargdár* to pursue their labour, receiving advances, and, on the crop being gathered, making payments to him in cash, but probably more generally in kind. This was the so-called 'produce' to the *vargdár* of *kumri*

* Jamabandi chittas = "running account of assessment annually settled and paid."

cultivation, in respect of which he was assessed to Government at so much a knife. * * * The only security for the tax being collected at all, if directly collected from such a class of persons, as chiefly and, in early times at least, almost exclusively were carrying on this cultivation, would be by taking it beforehand, and, at any rate, before they could dispose of the crop. But during the interval how were the cutters to live, and how provide the *korlaya* tax beforehand? So the interposition of a middleman to be answerable to Government, and who could keep an eye on the cutters, advance them necessaries, and take from them so much grain if not cash, as his produce would be eminently convenient to the revenue administration."

Green, J., concludes that payment of *kumri* assessment shows no estate or permanent right in forests.

(16). Looking to the nature of *kumri* and *kumri* assessment as thus ascertained, Green, J., came to the conclusion "that the entry of *kumri* assessment in the plaintiff's *vargs* and its payment for a long series of years does not show or manifest any estate or permanent right at all in the forests, as such, as being vested in the plaintiff, even as to such ground as he might have been able to show had been at former times *kumrieḍ* by his labourers," and that Government had the right to stop *kumri* cultivation altogether in forests not shown to be private property on some other ground than the mere entry of *kumri* assessment in a particular *varg* or number of *vargs*. He also held that even if it should "be considered that the plaintiff had established a right, exclusive of others and permanent as against the Government, to have *kumri* cultivation carried on" in certain places, such a right would not "necessarily involve general ownership in the soil" and "is quite consistent with general ownership in the soil being in" Government.

Was kumri assessment the farm of a poll-tax.

(17). *Kumri* assessment has been regarded in some of the official documents recorded in the case as a farm of a poll-tax, and this view of it was contended for by the counsel for the defence. Green, J., was of opinion that "*korlaya*, when collected by Government direct from the cutters, had the nature of a poll-tax," and that "the fact that it is collected from third persons, viz., *vargdárs*, does not * * alter its essential nature;" but he thought that it would not be "correct to describe the entry of *korláya* in a *varg* as being a farm of a poll-tax," inasmuch as it does not appear that *vargdárs* "paid to Government a fixed lump amount for the right of levying so much per head on the cutters." "Though paying so much a head to Government or having his *kumri* assessment fixed with reference to so much a head" the *vargdár* received from the cutters payments "in money or kind, making his own terms with them." West, J., combats

this theory of *kumri* assessment being a farm of a poll-tax at considerable length, and in several parts of his judgment favours the view that it was "fixed on an estimate of how much *kumri* could be cut at the rate (for *geni hutwali*)* of one rupee for each bill-hook thus employed." It was, he thinks, "a rateable estimate based on profits usually realized," Tippu's regulations having directed that "all *kumri* lands appertaining to the villages shall be brought into the measurement (or survey) and shall be included in the jama."

West, J.'s views as to effect of entry of *kumri* assessment in a *varg*.

(18). West, J.'s views upon the question of the effect of the entry of *kumri* assessment in a *vargdár's varg* vary considerably from those of Green, J., and must be separately stated. In the Panch Maháls, which is the portion of Kánara to which the suit related, it was reported so early as A.D. 1823, (1) "that the villagers assert that all the jungles, great and small, belong, within the boundaries of each village, to the people of that village," (2) that "the whole *kumri* assessment is entered in the accounts of individual *vargdárs*" and (3) that "these accounts" ("or," adds West, J., parenthetically, "it may be 'these estates,' as 'varg' means† either") extend to all the hills and jungles, because the *vargdárs* have been wont to cultivate *kumri* at will in all the hills and jungles, but (4) that although "the assessment is entered for the *vargs* of the cultivators, no hill or jungle is assigned to any individual ryot with specified boundaries." "The position" thus "apparently taken by the *vargdárs* as early as 1823 is," says West, J., "plainly not maintainable."

General principles. Levy of a tax on land implies knowledge of the payer's being beneficially connected with the land, but nothing more.

(19). "The levy of a tax does not," he says, "necessarily make a proprietor." But "to levy money from a ryot on account of any land implied a knowledge that he was there and in some way beneficially connected with it. * * * But what the precise nature of the connection was, would in each case depend on the acts done by the tax-payer, the intimation these afforded of the position he held or assumed, and the consequent acts or forbearances of the executive." "The mere fact that a *vargdár* is charged in the village accounts with an assessment—and he alone perhaps in that village—for *kumri*, cannot of itself make him owner of all the forests within its boundaries. Being found to employ three labourers on *kumri* cultivation he would in a re-valuation for assessment ('*azmaish*' as it was called) be rated as for *geni hutwali*, or

* "*Geni hutwali*" = "rent-produce to the owner as landlord."

† Mr. Blane, the Collector of Kánara, in a report of 1849 pointed out that the term "*varg*" originally meant "the account of a ryot with Government," not "estate." Green, J., found that this view of the original significance of this word was confirmed by the *jamábandi chittas* recorded in this case.

rent produce, on the three rupees or other sum which those three men as independent cultivators would have paid; and this charge whether he cut more or less would remain unchanged until a new appraisement took place." "In the sub-distribution of the aggregate *beriz*" (of a village) "which under the earlier system was made amongst the several land-holders, a portion would naturally be laid upon the *vargdár*, who had acquired exclusive enjoyment of a tract of forest, and thence obviously derived a profit, enabling him to bear at least an assessment proportionate to the customary rates paid by the less favoured migratory *kumri* cutters. If this ordinary holding was regarded as perpetual or *muli*, the charge, reckoned according to the number of bill-hooks actually or ordinarily set to work by him, would be attached to his *muli varg*. If he was a mere *chál genidár*, the item would be added to his *geni varg*. And when, on the system of village settlements being superseded by a *kulwár* or individual settlement with each land-holder, it became necessary to estimate the proper relative liability of each as a contributor to the aggregate *beriz*, it was natural that the same method of appraisement should be followed by the village officers." "Men of the wilder tribes moved about from place to place, tilling each in his rude fashion as much as with his bill-hook he could clear, and quite regardless within what imaginary boundary of village or *magni* he exercised his untutored industry. The more regular cultivator, anchored to one spot by the possession of a house, a rice-field and a betel garden, would still in his *kumri* cultivation choose the precise places that suited him best, with equal disregard to boundaries that no one insisted on. As he cultivated *kumri* and profited by the cultivation, the revenue officer set him down for a contribution on that account; but as this process would not deprive him of an estate, neither would it confer one. The case of Narna Cumpti is one that seems quite in point. This *vargdár*, paying a considerable sum as a resident cultivator of rice lands within a *magni*, extended his *kumri* operations far away along the untenanted slopes of the ghâts. The tract belonged geographically to other *magnis*, but he was charged for the Government's share where he permanently resided or had his permanently cultivated property. This was most natural, seeing that his *kumri* cultivation would one year be in one village, and in the next in a different one." "The mere payment of the *kumri* assessment would not create 'proprietary rights' in the case of a *vargdár*, any more than it would make the wandering *kumri* cutter, who paid his rupee to Government one year in one táluka and another year in another, proprietor or co-proprietor of all the forests in the province. The mere form in which the contributions from the one or the other were brought to account in the Government books, as the payers could not control it, served merely as an indication of the particular way in which that portion of the revenue was

regarded by the Government in its Financial Department."

Payment of tax gradually becomes admitted as a test of ownership as boundaries of holding become more and more defined.

(20). "In the case of rice-lands the revenue officers admitted the payment of landtax as a decisive test of ownership. Yet it was not the payment which created the estate * * * * But from the well-defined boundaries of a rice-field, the elaborate process of cultivation and the annually repeated operations, the connexion between the payment and the ownership of any spot was usually so certain that the one could be safely inferred from the other. Continuous payment involved continuous acquiescence by the recipient in the occupation for which the payment was made. This it was which made the raiyats safe in their ownership of rice-field which, as Mr. Fisher said, had generally once been *kumri* lands; and the same tacit acquiescence, wherever definitely invited and in any way plainly manifested, would have the same effect, though the place might be used for building, for *kumri*, or as the precinct of a temple." Thus it was that in Bekal *kumri* holdings had at the time of the Collector Mr. Fisher's report in 1858 already begun to be treated "in every way as the *bonâ fide* property of the ryots." In the districts above the ghats, on the contrary, "disturbed and desolated as they had been, never in all probability more than very sparsely populated, no such evolution of distinct forest estate had taken place." The kind of temporary occupation of spots in the forest which there prevailed, "without appropriation of any spot for more than some months or a year, was no more necessarily a property or possession than the occupation by a fishing-boat of a particular place on the sea. Property arising from occupation is itself a derivative notion drawn from associations that do not at all attach to the case of a mere vagrant or casual cultivator; and the case is not altered by the circumstance that convenience or physical necessity has confined his activity within some assignable range. Possession is guarded in the interests of society; but the mere having made temporary use, or intending to make use, actually or potentially, of a particular area or parts of it, is not possession."

Application of above principles to the district of the dispute.

(21). "The case of the *kumri* holdings in the Panch Mahâls, which is the one we have to deal with, seems to be intermediate between" the two above extremes. There "the jungles being found turned to use by the occupiers of rice-land *vargs* or by other stationary resident of the villages, their several supposed profits had been appraised for contributions to Government, and those contributions entered against the occupiers' names. Appropriation had progressed so far that the people of each vil-

lage asserted a right to exclude those of another, and this idea had been fostered by the system of village assessments. Within the village those ryots who had, as the community grew up, habitually used particular portions of the forest, either directly or through kunbis, whom they called in to assist them as labourers, came to be associated with those lands in the popular sentiment, not at first probably in a way that constituted a recognition of full ownership, but which gradually approached that conception." But whether the *kumri vargdárs* in the Panch Maháls had acquired an ownership in the forests, absolute or usufructuary, is a separate question. "His employing a few men * * * in the village jungles, one year in one spot and the next in another, as Mártoba says he employed his tenants at Kaignád, could not of itself make him owner of the jungles any more than a *vargdár* above the ghâts, extending his casual operations over a wider range, became owner of a whole táluka. Even in the case of a grant of a definite quantity of land, but of undefined locality, the two eminent lawyers Yorke and Talbot, both afterwards Lord Chancellors, said: 'We are of opinion that in regard to the place where the said lands lie is not described, nor any method provided by which the same may be ascertained, such grant is by reason of the uncertainty thereof absolutely void in law.' He could not become owner in fact, without the active or passive assent of the Government passing its proprietary right to him. Such assent is not for a moment to be inferred as to an extensive tract of forest from the payment and receipt of some insignificant sum, a moiety of the rent realized on two or on ten acres which may most naturally be referred to rateability, or the mere participation by the State, according to an immemorial rule, in all profits arising from the land. As there must be certainty in a grant as to the area conferred, so there must be certainty as to the area, or at least as to the identity of the object occupied, if the occupation is to raise the presumption of a grant or of acquiescence in a definite occupation." "There can be no grant, no acquiescence in a possession, unless the essential elements of possession, a fixed, a definable, an exclusive occupation exist, and are present to the perception of the parties." "An undisguised occupation by open and exclusive user as continuous as the object reasonably" admits is requisite "since no assent could be implied to what was not apparent. But where such an occupation subsisted, the mere employment of the land for rice, dry-crops, pasture, or even for the mere growth of firewood, would not properly form a ground for saying that in one case ownership had been acquired by the lapse of time, and the acquiescence of the State, while in another it had not." But "in the case of a private owner even, the allowance of acts which do not necessarily involve any denial of his ownership, or a grant from him, do not suffice to create an ownership against him; and 'the mere non-interference of the State, to which neglect is not to be

imputed, is not to be accounted for, if it can be otherwise accounted for, on a presumption of a surrender of its ownership. Such a transaction must be evidenced by an undisguised and effective appropriation assented to or submitted to by some one having due authority, or else fortified by an equivalent law of prescription."

The acquiescence of Government in the levy of *kumri* assessment by *vargdárs* marks its recognition of private ownership.

(22). But the fact of Government not itself levying fees for a series of years from the kunbis and others who cut *kumri* within the limits of a piece of jungle claimed as belonging to a *vargdár* would, in West, J.'s opinion, "mark its recognition of private ownership." "Add to this", he continues, "the constant exaction of such fees by the *vargdár*, and the assessment of his income thus derived expressly from a *kumri* tax, and the indication becomes conclusive. That the Government, instead of itself levying a rupee a head, or a rupee an acre, from all kunbis resorting for *kumri* to a particular area, should leave their admission to the *vargdár*, who called it his property, and should take from him a moiety or about a moiety of what he received, just as in the case of rice land, implies, as it seems to me, an allowance of equal rights in the one kind of holding as in the other." "The mere entry of an item of assessment for *kumri-korláya* would not be conclusive of a definite occupation; but a charge for particular places within the village as included in his *varg* would tend to show, especially when coupled with the absence of any levy by the Government directly from the actual *kumri* cutters, that these were regarded as occupied by the *vargdár*. This indication would be stronger, if the charge was made, though the lands lay waste. If combined, they make up the area of a village which, as a whole, gives its name to a single *varg*, it is hard to resist the conviction that the *vargdár* was regarded as occupying the whole area."

Results of West, J.'s examination of the evidence as to plaintiff's enjoyment and possession.

(23). Guided by these general principles, West, J., considered the evidence bearing upon each of the four properties in dispute separately. In the case of the Báli forest he found that Mártoba, plaintiff's father, got himself recognized in A.D. 1842 by "a very impudent fraud" as *kumri-vargdár*. With regard to the Goera forest he came to the conclusion that "the accounts of the Government, so far as they can be relied on, go to sustain the plaintiff's assertion of an actual inclusion in his holding, not merely of the rice lands, but also of the forests of the village of Goera" and that "the revenue officers had notice of the holding and apparently recognized it, down at least to 1841." The evidence as to the portions of the Kaignád forests in the plaintiff's possession he found to be vague, confusing and insufficient, although certain portions of them were, he thought, no doubt, included in his *varg*, so as to give him a right of

property in them. As regards the Bhairé forest, it has already been stated (*supra* para. 6) that plaintiff failed to produce good evidence of possession or enjoyment of any portion of them previous to A.D. 1842.

Both Judges agreed as to suit being barred by limitation.

(24). But although the views of the two learned Judges upon the general questions involved in the case are thus to some extent different, they are both agreed that the suit was barred by limitation, and it is upon that ground really that the claim has been rejected. The reasons for this decision are of great general importance with respect to other similar suits now pending or which may hereafter be filed, and it will be useful to state them.

Right to cut timber in the forests generally distinctly barred.

(25). First with regard to the right to cut timber in the forests. Teak, poon and blackwood the plaintiff admits he has never been allowed to meddle with. These were always reserved trees. On the 18th April 1823, the Principal Collector of Kánara issued a proclamation informing the rayats that in conformity with the orders of Government all proprietors of land would in future be "at liberty to cut teak, poon and all other trees growing in their proprietary estates or private gardens and to make use of them according to their pleasure." But this proclamation would, of course, only apply to actual proprietors of the soil. The Collector, Mr. Blair, on the 15th April 1841, replying to a reference from a Tahsildár as to the right apparently then asserted by Mártoba (plaintiff's father), observed that "the payment of *kumri* assessment can only be shown as a ground for the raising of *kumri* produce," the *vargdár* "cannot cut trees at all. The *vargdárs*, it appears, allow people to cut a large number of trees, alleging that the Sarkár forests belong to their *vargs*;" and he directed that this should be prevented unless the *vargdár* has in each case "obtained permission on the production of evidence to satisfy the Sarkár that the forest belongs to his *varg*." And on the 3rd May 1841, Mr. Blair prohibited Mártoba from cutting trees in any jungles "except places cultivated by his tenants." From 1841 downwards Government distinctly assumed and exercised the ownership over the trees in the disputed jungles. In the earlier years of British rule timber of the ordinary kinds had hardly any selling value in Kánara. * * * * Teak, poon, blackwood and jackwood had been preserved in the Government forests from early in this century as before the introduction of the British rule; but as to other kinds of timber there seems to have been no check upon any one who chose to resort to the forests and help himself to what he wanted." But after reviewing the whole of the evidence, West, J., said "there cannot be any reasonable doubt that from the time when it became

worth while to do so, the Government officers asserted and exercised constantly and openly the proprietary right over the timber of the forests which they alleged was vested in Government. The plaintiff's family knew this, submitted to it, themselves applied repeatedly for timber to the revenue officers. A few trifling and probably furtive transactions * * * cannot be set for a moment against such a body of testimony."

But *vargdárs* might conceivably have permanent rights in the soil, though not entitled to the timber.

(26). But "a property in the soil must not be understood to convey the same rights in India as in England. * * * Those acts which under one system would be necessarily regarded as contradictions of any ownership over the object on which they were exercised, except that from which they spring, might, under another system, be quite compatible with an ownership subsisting unimpaired side by side with the limited right to which they would be attributed." "It is quite conceivable that a *vargdár* may, as such, have rights * * * capable * * of continued existence and recognition, notwithstanding large deductions from their completeness according to the widest description." Hence West, J., considered it "necessary to consider the facts connected with several appropriations of land by the revenue officials within the limits of the plaintiff's claim."

Effect on plaintiff's general title of several appropriations by revenue officials of land within the limits of his claim was to prevent his acquiring title by prescription.

(27). The evidence showed that several such appropriations had been made from time to time. These the plaintiff averred were simple trespasses, whilst on behalf of Government it was urged that they were particular exercises of a complete ownership. Viewing the appropriations in the latter light, West, J., thought "the plaintiff's family could never have acquired a title by prescription under a possession which was interfered with at the discretion of the revenue authorities in such a way as to show, both by act and intention, that they did not allow it to be that of an owner. There are strong grounds for supposing, however," he said "that while the revenue officers supposed plaintiff's family to be entitled to, and allowed them to hold as owners, some lands of much smaller extent than they claimed, they dealt with the rest as Government property free from private rights. Grants made out of this property so conceived, would not at all contradict the plaintiff's right to the lands recognized as his property."

But some particular lands have been all along recognized by Revenue officers as plaintiff's property.

(28). The rest of West, J.'s judgment is then taken up with the considerations of the plaintiff's right to the particular lands, which he deemed had been recognized as his property.

"The plaintiff's family," he says, "though the proof of their *sanad* titles entirely fails, yet, as *vargdárs*, exercised rights over forest tracts in all the estates to which the present claim extends. In Báli these rights could not be referred to any particular space. In Goera they extended throughout the village lands. At Kaignád and Bhairé they were exercised over areas which might have admitted of recognition, had the requisite evidence been adduced, but which cannot be recognized from the evidence placed before us. * * * While the plaintiff's family set up claims to the whole forests, it is clear that from 1842 downwards these claims were never admitted. It is clear, also, that for many years after 1842 some forest lands were recognized in the Government accounts, in the transactions recorded in those accounts and in the orders of the Collectors, as belonging in some way to the plaintiff's family. They were assessed for those lands, held such enjoyment of them as was allowed to any one, and were repeatedly admitted to have, at least, a usufructuary interest for the purposes of *kumri* cultivation."

Effect of acts of Government and local officials as to timber rights in these lands depends upon whether they were "private estates."

(29). The principal acts affecting rights to timber in private proprietary estates are a proclamation of the Government of Madras issued on the 25th April 1807, and the Collector's proclamation of 18th April 1823 already referred to (*supra* paragraph 25). The former announced that the Honourable Court of Directors had resolved to assume the sovereignty of the forests in Kánara, and that all persons were prohibited from cutting or destroying trees in the teak forests or from taking away the young plants. This proclamation, West, J., considered to mean no more than that Government "intended in future to exercise the eminent domain vesting in it as sovereign for the preservation of forests over which public rights subsisted." The Collector's proclamation of 1823, it has already been said, referred only to proprietary estates. In 1822 the Collector Mr. Harris ordered an inquiry with the view of ascertaining what forests were Government forest and private ones, but after the issue of the proclamation of 1823, the demarcation of the private and Government forests was allowed to drop, and for several years the administration of forests was lax and defective. But as the proclamation of 1823 was still legally operative, it is necessary to consider how far the forest lands in dispute were private estates.

The forest lands in dispute were prevented from becoming private estates by the orders and transactions subsequent to 1842.

(30). On the 14th January 1842, the Collector, Mr. Blair, when dealing with "a proposal by the shánbhog (village accountant) to collect the *kumri* assessment at Kaignád and Báli direct from the actual cultivators," directed that Mártoba (plaintiff's father) should

not be allowed to have any of the *kul-nasht* (tenantless) lands, but that he should "continue to enjoy for the future all those jungles which have from the beginning been cultivated with *kumri*." This order "recognized Mártoba's claim to the jungle so far as he, by his tenants, had actually brought it under *kumri* cultivation," and in 1844 it was held that there was no objection to his "cutting firewood in the jungle to the enjoyment of which he has by the Collector been held entitled, and any undisputed jungles for which he has *mulpattas* or leases, but that no other person was to be allowed to cut firewood in the jungles referred to." On this West, J., remarks that "albeit that the plaintiff's use of the forest never went beyond turning it to profit by *kumri* cultivation, that user, if a sole and exclusive one, would be a possession ripening by the acquiescence of the Government into a right to possess." Such acquiescence was, however, by subsequent orders distinctly not given.

Orders issued since 1842 regarding *kumri* lands. Their effect on plaintiff's title to particula lands.

(31). From the proceedings of the Board of Revenue of 16th April 1859, it appears that "the question of whether it is expedient to allow *kumri* cultivation first came under discussion in reference to the report of Dr. Gibson to the Government of Bombay, which was referred to Mr. Blane, the Collector of Kánara, for his observations." On receipt of the Collector's report Government "agreeably to the recommendation of the Board, authorized the Collector of Kánara to restrict the cultivation of *kumri* to such places and to such an extent as might, in his opinion, be expedient for the 'preservation of the forest and the general welfare of the province'." He was also instructed to assert the right of Government to all forest lands to which a title cannot be clearly established by private individuals. The details of the circular order which Mr. Blane issued at the end of 1848, or the commencement of 1849, in pursuance of these instructions are quoted by West, J. One of its provisions was that, "where cultivation of *kumri* is allowed it is to be restricted to an amount reasonably proportional to the assessment actually paid."

(32). In the meantime, however, "the Head Assistant Collector, Mr. Forbes, had, on the 26th May 1848, issued an order which deprived the *vargdárs* of their *kumri* cultivation altogether, under some misapprehension of the Collector's wishes. Notice was given to the *kumri* cutters, that they would have to pay direct to Government. Of this Mártoba complained, and on the 10th April 1849, Mr. Blane, without setting aside the order referred to, issued an order in which he stated that he found that "Mártoba of Kaigmád and others cut *kumri* 1,000 per cent. in excess of the *kumri* assessment they pay" and directed that "in the cases of the several *vargs* in which the profits derived from the kunbis at the customary rate calculated according

to the number of knives employed comes to more than double the assessment paid by the *vargdár*," the excess be placed in deposit. The double assessment was to be handed to the *vargdárs*, already answerable for a single assessment in their *vargs*. Where the amount collected came to less than twice the assessment, the whole was to be handed to the *vargdárs*. Where the *vargdárs* were not debited with any *kumri* assessment, the amount collected from their tenants was to be appropriated by the revenue officers. This was called afterwards the *dugni* (double) arrangement.

(33). But as regards the plaintiff's lands these orders were not, it seems, carried out in their integrity. "After the action taken on the hasty order of Mr. Forbes in 1848, no attempt was made for several years either to collect the *kumri* fees direct from cultivators within alleged forest limits of Mártoba's *vargs* or to introduce cultivators independently of him. Mártoba and Bháskarápa were repeatedly told not to cut *kumri* beyond an extent corresponding in the rent it would produce to double the *kumri* assessment. They appear to have submitted, at least nominally, to these directions, and when they transgressed them to have paid the excess realized beyond double the assessment into the Government treasury, or even double assessment on the lands in excess; but these very proceedings show them to have been in possession of the lands, however hampered in their use of them. They still for some time chose their own places for *kumri* cultivation within their *vargs*." In 1851, the then Collector Mr. Maltby directed that the *jamábandi* "should be settled upon ascertaining the extent of cultivation by measurement (instead of by the number of knives employed)," and in his order "advisedly refrained from obtaining the means of effecting a settlement with the individual cultivators" in the case of the *vargdári* jungles; the settlement was to be still with the *vargdárs* themselves, not with the *kumri* cutters.

The Sub-Collector Mr. Robinson's order of 23rd February 1857 finally dispossessed plaintiff entirely from all his *kumri* lands.

(34). But owing, it appears, to a misconception by subordinate officers of the intention of Mr. Maltby, *vargdárs* were from this time forward required to present a petition each year to the local officer for permission to *kumri* land. In 1856 the Tahsildár refused the plaintiff Bháskarápa permission to cut *kumri* according to his application, because he had not specified the names of the cultivators. Bháskarápa appealed to the Sub-Collector, Mr. Robinson, who, on the 23rd February 1857, passed the following important order:—

"It has been decided that during this year, the Fasli year 1267, Bháskarápa may be allowed to cultivate so many acres as will yield to him an income equal to double the *kumri* assessment paid by him. You should make inquiries according to law what places are fit for the *kumri* cultivation, and

*point out to the persons in Bháskarappa's service the places to the extent in acres which, as shown above, ought to be allowed [to him] for the purpose of cutting the kumri.* Take measures to carry out the above [instructions]. Bháskarappa represents that there being a great number of *kumri* cutters, the *kumri* now permitted will not provide sufficient labour for their livelihood. The above order is issued in respect of the *kumri* which appertains to the assessment included in Bháskarappa's *varg*. If there are, besides these, more *kumri* cutters, then you should, under the orders already passed, containing rules regarding the *kumri* cultivation by other *kumri* (cutting) raiyats, allow to such persons so many acres as you may find on inquiry to be sufficient for their subsistence, and also impose assessment on this according to law."

Two months later Mr. Robinson directed that the rents taken from the *kumri* cutters should be credited to "*Sarkár kumri*." On the 22nd April 1857, Mr. Robinson passed an order, denying Bháskarappa's right to wild honey collected in the forests. No contention on his part was to be listened to, the honey was to be sold by auction, and moreover, except by order, no one employed by Bháskarappa was to be allowed to take any step towards cutting *kumri* in the forest.

(35). These orders which were subsequently confirmed by the Board of Revenue and the Government of Madras (who further directed that the *kumri shist* or assessment should be remitted) are held by West, J., to have deprived "Bháskarappa of possession as completely as he had ever had possession." "Having allowed that Mártoba and Bháskarappa had, through the knowledge and acquiescence of the local authorities, acquired an actual possession of lands subjected to *kumri* cultivation down to the year 1842, we must not refuse efficacy to the acts of the same authorities if they afterwards, depriving Bháskarappa, assumed or resumed possession on behalf of the Government. On the 23rd February 1857, Mr. Robinson, as we have seen, issued an order which not only prevented Bháskarappa from cutting *kumri* where he wished within the limits of his *varg*, but also allowed the Tahsildár at his discretion to introduce strangers to cut *kumri* there. A couple of months later he directs that the rents, taken from these *kumri* cutters, shall be credited to '*Sarkár kumri*'. This was depriving him of possession as completely as he had ever had possession. The whole management of the *kumri* lands was taken into the hands of the revenue officers; and Bháskarappa was recognized as entitled only, under such circumstances, to a certain portion of the proceeds."

(36). These then are the grounds on which it was finally held that plaintiff's claim was completely barred by limitation. "Supposing," said Green, J., "the plaintiff and his predecessors to have had the rights now asserted, the difficulty seems rather to be to find an act of the revenue officers, at least after A.D. 1847

Plaintiff's suit effectually barred, because it was not filed within 12 years from date of Mr. Robinson's order.

and down to A.D. 1858, which was not a denial of, if not an actual interference with, them." "His possession," said West, J., "had ceased in 1857; his suit was not brought till July 1870."

(G. R. No. 2493, dated 4th May 1881.)

8. Government do not think it is advisable to dispute full proprietary title on the part of any one to whom a summary settlement sanad has been granted. (G. R. No. 1442, dated 6th March 1877, and G. R. No. 3984, dated 7th August 1878.)

9. On the Commissioner, C. D., soliciting instructions as to whether the provisions of Government Resolutions No. 1442, dated 6th March 1877, and No. 3984, dated 7th August 1878, were applicable to (1) terminable inám settlements as sanctioned in Government Resolution No. 2900, dated 1st August 1864, (2) settlements by which a judi of ¼ is imposed on the watan holdings of village servants useful to Government as sanctioned in paragraph 13 of Government letter No. 1915, dated 28th May 1860, and (3) Gordon's Watan Settlements, the following report of the Remembrancer of Legal Affairs, No. 500, dated 22nd April 1880, was circulated by Government for information and guidance:—

"*I.—Terminable Inám Settlements.*

"Paragraph 4 of Government Resolution No. 2900 of 1st August 1864, sanctioned the Revenue Commissioner N. D.'s proposal that sanads should be issued to those who accepted this settlement 'in the same form as those issued to holders of ináms to which the summary settlement had been applied.' Accordingly the two terminable inám sanads of which forms are in the undersigned's possession provide that the village or land 'shall be continued for ever by the British Government' as the private property of the persons who shall from time to time be its lawful holders.' The right of property in land includes the right to the trees growing on the land, and as regards the terminable inám settlements the Commissioner's enquiry should therefore, it seems, be answered in the affirmative.

"*II.—Settlements of lands held by village servants for services which, though not useful to Government, are of use to the community.*

"Paragraph 13 of Government letter No. 1915 of 28th May 1860 did not lay down the precise conditions of these settlements, and it is not known whether sanads have been granted in confirmation of them. If sanads have been granted, the answer to the Commissioner's enquiry will depend upon the terms contained in them.

"*III.—Mr. Gordon's Watan Settlements.*

"From the correspondence and statement issued with Government Resolution No. 6018 of 25th October 1875, it seems that the terms of this settlement varied in each district. So far as appears from that correspondence and statement the 'watans' were merely continued by most of the sanads granted, without any novel condition as to their becoming the private property of the holders. Some of the sanads contain a condition that, if at any time all the sharers in the watan agree to pay an additional nazarána of one anna in the rupee, 'the general privilege of transferring the watan or any recognized share thereof by sale, mortgage, &c., as private property, will be granted by Government.' In those cases, if any, in which this concession has already been made, the question will arise whether the terms of the sanad suffice to convert the watan

into absolute private property, but otherwise the question cannot arise, and until it does it is probably not worth while discussing it, especially as the language employed differs more or less in each district. This much may, however, be affirmed that the language of these sanads is not in any case identical with that of the summary settlement sanads discussed in the correspondence ending with Government Resolutions Nos. 1412 and 3984, dated, respectively, 8th March 1877 and 7th August 1878, and, therefore, that these Resolutions are not applicable to them.

"2. It may be added, to prevent misconception, that as regards service watan property the question whether or not the watandárs are entitled to the trees growing on their lands does not depend altogether upon Mr. Gordon's or any other recent settlement made with them by the British Government. If such settlements merely continue to them their watans as of yore it is still open to watandárs to contend that their ancient tenure was proprietary and entitled them to the trees. Whether such a contention could be established it is not easy to say, as the point has never yet been raised."

(G. R. No. 2502, dated 5th May 1881.)

**10.** There can be no doubt that in sanads issued by the Peishwa's Government as by other former Governments customary phrases such as *jalturu, trun, páshán, nidhi nikshep* were often used without intending to confer all which they may be interpreted to imply. But Government have accepted the principle that the proprietary right to trees follows the property in the soil and also the view that the occurrence of the phrase above specified in a sanad indicates that the property in the soil was granted. (G. R. No. 4634, dated 15th July 1882.)

**11.** All cases in which inámdárs claim a right over the forests in their villages should be referred to the Forest Settlement Officers for a careful enquiry and separate report in each case for the final orders of Government. The Forest Settlement Officer's duty simply will be to inquire fully into the case, to report the result of his investigation and to record his opinion which Government will be at liberty either to accept or to refuse to accept. The reports should be submitted to Government through the Legal Remembrancer. It is advisable that the sanad should be examined in every case before the forest is allowed to be cut down in inám villages.

Government do not consider it desirable that titles which have been settled under the Summary Settlement Acts should be excepted from the operation of the above ruling. Where quit-rent has been calculated on forest revenue, there is no room for doubt, but it seems expedient that Government should be satisfied either from such fact or otherwise that the settlement did extend to forest land before the claims of inámdárs to such lands, which are often very valuable, are finally admitted. (G. Rs. Nos. 6457, dated 29th October 1881, 3303, dated 28th April 1883, 2037, dated 6th March 1884, 4111, dated 21st May 1884, and 7092, dated 5th October 1886.)

**12.** Cases regarding inámdárs' forest rights may be sent by Forest Settlement Officers and Collectors

direct to the Legal Remembrancer without passing through the Commissioner's offices. It is understood as a matter of course that either the Legal Remembrancer or the Collectors may refer to the Commissioners when occasion may arise. (G. R. No. 7851, dated 5th November 1886.)

**13.** Questions as to forest rights in devasthán lands and such other small holdings should be reported to Government for orders as they arise, through the Remembrancer of Legal Affairs. (G. R. No. 6157, dated 12th September 1890.)

**14.** Inquiry into forest rights should be made and a separate report submitted in the case of each inám village, whether it now contains forests or not. With the report can be submitted the suggestions of the Forest Settlement Officer as to the course it is expedient to follow in each case.

The object of such inquiry is to determine finally, in the case of every holder of an entire inám village, whether he has forest rights or not, so that the Revenue as well as the Forest Department may know how to deal with such villages in the future in respect of forest claims.

(G. Rs. Nos 8846, dated 10th November 1884, and 5016 dated 16th June 1892.)

**15.** The object of the enquiries into the forest rights of inámdárs, as connected with forest settlements, is to enable Government to decide in each case whether Government has the right, should it be deemed desirable, to constitute part of the land of the village State forest. (G. R. No. 8888, dated 31st October 1885.)

**16.** It is not necessary that the inámdár should be called upon in every case to state whether he claims forest rights, and if so upon what grounds. The object of the inquiries into the forest rights of inámdárs, which are not in any sense judicial or conclusive inquiries, is to enable Government to determine in what inám villages they will and in what they will not assert forest rights. When once it is ascertained that a village has come under the summary settlement, Government have at once the means of determining their course without further investigation, and it seems quite unnecessary to trouble the inámdár. In most other cases also the nature of an inámdár's title is ascertainable without reference to him, and the inámdár should only be asked to furnish information or to state his own views when the Forest Settlement Officer has reason for doubting the real state of the case concerning his village. (L. R. No. 1608, dated 16th December 1885; *vide* G. R. No. 469, dated 20th January 1886.)

**17.** When a summary settlement has been made it is unnecessary to go beyond it, but in every case it should be clearly ascertained whether the settlement extended to forests, and a report should be made to Government before any claim to forests is admitted,

For the purpose of determining the question the area of the land entered in the notice and written acceptance, if any, should be compared with the area of the land in the village and of the cultivated land, and it should be ascertained whether the forest land was assessed for the purpose of fixing the quit-rent, and whether the forest land was actually in the possession of the inámdár at the time of the settlement. It has not been decided that the fact of summary settlement having been applied to a village is sufficient proof, *primâ facie*, of full forest rights having been granted, but only that when a summary settlement has been made it is unnecessary to go beyond it, that is, to investigate the antecedent validity of title. In cases in which a summary settlement has not been made, the existence of a valid sanad in which full forest rights throughout a village are granted is conclusive, and when that fact is established, further inquiry is unnecessary, but all claims to forests should be reported to Government through the Legal Remembrancer for final orders. (G. Rs. Nos. 7407, dated 23rd October 1882, and 1305, dated 17th February 1883.)

**18.** It has not been ordered and it is not intended that inámdárs should be called upon to prove their rights to forests. If it cannot be proved from the Collector's records or otherwise that the forests were at the time of the settlement in the possession of Government, the title of the inamdár will not be questioned. But it is obviously desirable that before the settlement of the forests of a táluka or district is complete it should be clearly determined to what lands the summary settlement has been applied. (G. R. No. 3079, dated 15th April 1884.)

**19.** Cases in which the summary settlement has been applied to specified fields in a village may be exempted from the orders in Government Resolution No. 7402, dated 23rd October 1882. There can be no doubt in such cases regarding the extent of the settlement.

Government has not accepted the view that a summary settlement cannot be applied to the cultivated land in a village without being extended to the forest land also in that village. (G. R. No. 2231, dated 14th March 1884.)

**20.** Section 189 of the Land Revenue Code empowers a "Revenue Officer" to summon witnesses, &c., "for the purposes of any inquiry which such officer is legally empowered to make." The term "Revenue Officer" is defined in Section 3, clause (2), of the Code to mean an officer appointed under that Code, and "employed in or about the business of the land revenue or of the surveys, assessment, accounts or records connected therewith." An officer employed in ascertaining whether the forest rights in a certain village belong to the Government or to the inámdár is not a Revenue Officer as thus defined, and he cannot legally exercise the powers conferred by Section 189 of the Code for the purpose of any such inquiry. Even were he gazetted an Assistant Collector, the

inquiry would not relate to "the business of the land revenue," nor could it be held to be an inquiry which an Assistant Collector is "legally empowered to make." (L. R. No. 730, dated 28th May 1884; *vide* G. R. No. 4964, dated 20th June 1884.)

**21.** Though it is very desirable that the management of the forests in the tálukdári villages of the Panch Maháls should be in the hands of the Forest Department, yet it would not be equitable to maintain that management without the consent of the tálukdárs. It is probable that the consent of the tálukdárs may be obtained if they are treated liberally in regard to their forest revenues and if the objects of Government are fully explained to them. They should be made to understand that Government desire to undertake the management of their forests not for the sake of profit but in the general interests of the country, and that it is intended that the whole of the net profits of the forests realized under Government management shall be made over to them or credited towards their jama, Government retaining no part of the forest produce as their own, but only adding to the annual jama payment such sum as appears equitable on account of the portion of the revenues of the estate derived from forests.

The tálukdárs should be recognized as full proprietors of the soil of their estates including the forest lands, the right of Government being confined to a charge on the rental.

Government do not propose to make any addition on account of the profits of forest to the tálukdárs' jama as fixed by settlements now current.

These principles are applicable to all the estates in the Panch Maháls which are held on the tálukdári tenure. (G. Rs. Nos. 4723, dated 23rd June 1883, No. 8999, dated 15th November 1884, and 1664, dated 26th February 1885.)

**22.** In cases in which a summary settlement has been made and a kabuláyat has been executed regarding forests, the right of the inámdár to the forests on the conditions specified in the kabuláyat should be admitted. (G. R. No. 6674, dated 8th September 1883.)

**23.** Letter from the Remembrancer of Legal Affairs, No. 531 of 1883, on the subject of forest rights in inám villages subjected to a summary settlement under Bombay Act VII of 1863 in the Thána District.

"2. In a large number of the cases reported upon by Mr. Ebden, the inámdárs' original sanad contained the words which have been held by the High Court to convey proprietary rights in the soil and therefore in the forests. I apprehend that there can and will be no question as to the necessity for recognizing the title of these inámdárs to their forests, whatever peculiarities may have been detected in the manner in which the Collector and

his subordinates gave effect to the provisions of the Summary Settement Act in respect to them.

"3. The only point which may appear doubtful with regard to inámdárs of this class is whether Government are bound by the terms of the kabuláyat which the Collector had taken from them, to the effect that in lieu of paying a summary settlement cess on their forest-area they would pay one-eighth of two-thirds of the proceeds of every sale of their timber whenever they might fell. These kabuláyats, it seems, are divisible into two classes, *viz.*, (1) those taken after Government Resolution No. 254 of 23rd January 1865 was passed and (2) those taken before that date. There is no ground for any contention against the validity of kabuláyats of the first class, because the above Resolution expressly authorized the Collector to take them.

"4. But as regards kabuláyats of the second class, there is this to be said, that the Collector had them taken on his own responsibility and that Government have never since formally ratified his act. The history of these kabuláyats is very clearly given in paragraphs 18—34 of Mr. Ebden's able report. It appears that the Collector, Mr. Gordon, finding himself unable to carry out the orders of the Revenue Commissioner, given in his No. 2250A. of 17th October 1863, as to the manner in which forests should be assessed for the purpose of summary settlements, thought of this plan of avoiding the difficulty. Before asking for the sanction of Government to the plan he took steps for ascertaining whether the inámdárs would accept it. He found that they would, and about seventeen kabuláyats had already been executed before he wrote in for the sanction. In his letter he did not ask Government to ratify the kabuláyats which had already been taken, he did not even mention that any had been taken. With the recommendation, however, of the Revenue Commissioner, Government, in the Resolution named in the last paragraph, sanctioned the Collector's proposal, and I do not suppose that Mr. Gordon in the least doubted that this sanction was sufficient to cover all the kabuláyats already taken. Had Government sanctioned his proposal with some essential modification, it would have been necessary, no doubt, to take fresh kabuláyats and to cancel those previously taken; but in the absence of any such cause, the *ex post facto* sanction was very naturally considered by the Collector to be sufficient authority for what he had done in anticipation of it.

"5. If, at the time, it had been brought to the notice of Government that these kabuláyats had already been taken, it is certain that Government would have approved them. I think, therefore, the fact that Government shortly afterwards sanctioned generally the Collector's proposal was sufficient to justify him in deeming that Government had ratified the kabuláyats already taken. That this was his opinion is evident, because he did not issue order

for having the kabuláyats taken over again as he might easily have done, if he entertained any doubt.

"6. These same kabuláyats have now been in force, without any question being raised as to their validity, for twenty years, and, in that interval, have no doubt been more than once acted upon by both parties. It is not likely, I think, that any Civil Court would, under the circumstances, set aside these kabuláyats as having been made without authority.

"7. I am of opinion, therefore, that none of these kabuláyats could now be cancelled except by consent of the parties thereto. Further, the only result of any such kabuláyat being cancelled would be that the forest would have to be assessed under Rule 2 of Section 6 of Bombay Act VII of 1863, and it is, I think, very doubtful whether such assessment would be as profitable to Government as the arrangement in force under the kabuláyats.

"8. The foregoing remarks (paragraphs 4 to 7) have been limited to the case of inámdárs whose proprietary title was evidenced by their original sanads. But it will be evident that the same reasoning is equally applicable to all other inámdárs whose holdings contained forests, if they were otherwise entitled to have the summary settlement extended to those forests.

"9. As regards inámdárs whose forest rights were not clearly evidenced by their original title-deeds, the only questions raised which I need discuss are, therefore:—

(1) What is the effect of the manner in which the notices issued under the Summary Settlement Act to these inámdárs were worded—

(*a*) with respect to the area or revenue of the holding, and

(*b*) with respect to the foot-notes, which are translated in paragraph 43 of Mr. Ebden's letter?

(2) What is the effect of no decision having been come to before their kabuláyat was taken, as to whether the forests were their property or not?

"10. It is important that it should be borne in mind that the summary settlements in question were not merely contracts between the inámdárs and Government, the terms of which must be sought in the offer made on the one hand and the acceptance given on the other. These settlements were made under the provisions of Bombay Act VII of 1863, an enactment expressly passed for the purpose of legalizing, regulating and facilitating them. The correspondence to which Government allude in their letter under reply establishes that the following points, which I have from time to time submitted for the consideration of Government, have been concurred in by two successive Advocates-General, the Honourable Mr. Marriott and the Honourable Mr. Latham:—

(1) that on the acceptance by the holder of any land of the summary settlement, the said land becomes his 'heritable and transferable property' (Section 6, Bombay Act VII of 1863);

(2) that the right to the trees necessarily follows the property in the soil (VI. Bo. H. C. R., 188, A. C. J.);

(3) that such right extends to the whole area in respect of which the summary settlement was offered and accepted; and

(4) that Rule 2, Section 6 of Bombay Act VII of 1863, merely enabled the Collector to assess land of an exceptional character at his discretion, but did not permit of his excluding such land or the trees growing upon it from the operation of the settlement.

In further explanation of the last two points, I may now add :—

(5) That there is nowhere in the Act any authority for splitting up a holding and for offering the summary settlement in respect of one portion of it and withholding the offer in respect of the rest. The evident intention of the Act is that each holder of 'lands held either wholly or partially exempt from the payment of land-revenue' shall be entitled to the summary settlement in respect of his entire holding.

"11. Section 9 of the Act provides for the service of a notice upon the holder of lands held wholly or partially exempt from land-revenue. There is no provision in it that the area of the lands to which it applies shall be set forth in the notice. The notice is to call upon the holder of the exempt lands 'to state whether he is willing to accept and abide by the settlement' prescribed by the Act, 'or whether he demands formal inquiry into his title.' It is also to 'explain the nature of the alternatives offered on the part of Government.' Nothing more.

"12. A person receiving a notice and looking to the terms of the Act under which it was issued would therefore be entitled, in my opinion, to regard anything contained in it which was not prescribed by the Act as surplusage which could not affect his legal position one way or another. At any rate he would not be bound by anything which was inconsistent with the Act.

"13. Now it was not essential that the notices should set forth the area of the holding to which they related. The Collector of Thána appears to have been aware of this, for in his very first instructions issued on 11th September 1863, he directed that the area of a village should only be entered when the survey of that village had been completed, and that in other cases it would be sufficient to write '*sabandh gaon*', the entire village '*nime gaon*', half the village, &c., as the case might be. It does not appear to me reasonable to hold the Collector, and still less the inámdárs, responsible for the various

entries which the Mámlatdárs and their clerks made in the notices, in execution of, or in spite of this order. I do not think Mr. Ebden has succeeded in showing that there was any intention on the Collector's part of limiting the settlement to the precise area set forth in the notice; and if he had any such intention it was, I think, inconsistent with the Act. His object really appears to have been merely to indicate with sufficient clearness the holding to which the notice referred; and this is all that was necessary under the Act. Just as the parties to a deed are not held to be bound by an erroneous entry therein of the extent of area of the property affected, so also the figures in one of these notices were unessential if the holding to which the notice related was otherwise clearly indicated therein.

"14. The same may be said, I think, with regard to the amount of assessment or revenue shown in the notices. There was no legal necessity for setting forth in them the amount of the assessment on which quit-rent would be leviable. The Act clearly prescribes how the amount is to be ascertained and a reference to those rules would have sufficed. No legal presumption can be drawn from the fact that the assessment of forests was or was not shown, along with the assessment of the cultivated area, in the notices.

"15. The Collector at first directed that the holders of forest villages should not be served with notices until orders should be received as to how to calculate the forest revenue. Afterwards, when he had received the Revenue Commissioner's instructions as to the manner in which the assessment of forest lands should be ascertained, he called for a list of inám villages in which the forest had been decided to belong to the inámdár, and directed that the notices for forest villages in which the forest had been decided to belong to Government should not show the forest revenue. From these two orders and from the Collector's subsequent order it seems that Mr. Gordon's idea was that the entire assessment on which quit-rent was to be levied should be shown in the notice. But when he attempted to give effect to the Revenue Commissioner's orders for fixing the assessment of the forests, he found himself beset by difficulties, and so, as he was pressed not to delay issuing notices, he issued them to the holders of forest villages without showing the assessment of the forest but with foot-notes added to the effect that the quit-rent in respect of the forest would be levied separately, and in doubtful cases that the question of the inámdár's right to the forest would be the subject of future inquiry. In all this Mr. Gordon no doubt acted cautiously and discreetly, but the absence from the notices issued under his orders of the forest assessment or revenue is not a certain indication that he did not intend the forests to be included in the settlement even if it was competent to him (which it was not) to exercise his own will in the matter.

"16. With regard to the foot-notes which Mr. Gordon caused to be added to some of the notices, it is clear, I think, that they could have no binding force. The inámdárs might receive them as indicating the Collector's view of the law or as affording information of his intentions at that time, but their acceptance of the summary settlement, or their failure to reply to the notice had, in my opinion, no other effect than what the Act itself prescribes.

"17. With regard to the reservation of the right of future inquiry into the inámdár's claims to the forest, I cannot help thinking that Mr. Gordon went much further than the Revenue Commissioner or Government intended. The Revenue Commissioner, Mr. Ellis, in the last paragraph of his letter No. 2250-A of 17th October 1863, stated as follows :—

> '3. This rule applies only to inám villages in which the inámdár claims his right over a forest not included in the assessed lands of his village, but does not apply to forest admitted to be Government reserves which may happen to be situated within the limits of inám villages.'

The words used are 'claims' as regards inámdárs' forest and 'admitted' as regards 'Government reserves.' There is no indication here of an intention that there should be a preliminary inquiry and a decision in every case as to the inámdár's right to his forest. So again Government Resolution No. 254 of 23rd January 1865 was passed upon the assurance of the Revenue Commissioner that 'the settlement suggested was applicable only to alienated forests and not to those which were *admitted* to be Government property.' The Revenue Commissioner evidently thought that the summary settlement should and would extend to all forests within inám villages not *admitted* to belong to Government.

"18. Mr. Ebden has devoted some paragraphs to show that an inquiry and a decision on this question of an inámdár's right to his forest would not be foreign to the intention and meaning of the Summary Settlement Act. From this opinion I entirely differ. The primary object of the Summary Settlement Act was to dispense with the necessity of all preliminary inquiry or decision, and the erroneousness of Mr. Ebden's argument is, I think, at once evident if we attempt to answer the questions: (1) by what authority could such an inquiry be conducted and (2) what legal force would the Collector's decision have as against the express provision of the Summary Settlement Act that the entire holding of every inámdár who accepts a summary settlement shall thenceforward become his heritable and transferable property?

"19. The Resolution of Government, No. 3988 of 14th October 1864, placed the question of summary settlement holders' rights to trees and forests in its correct light. It said :—

> 'The Resolution of Government, No. 5388 of 1861, was intended to set at rest all doubts in

regard to inams to which the summary settlement was applied, that is, lands actually in the occupation of persons claiming them as inams.

'2. The decision in all cases with regard to the claims to trees will therefore turn upon the fact whether the inámdár was exercising over the lands in which the said trees are situated, rights of occupancy. If he was, his right to the trees should be admitted under the summary settlement, but if, as frequently happens, the forest reserves were distinct from the rest of the village lands, and the inámdár exercised no rights of occupancy over them at the time the settlement was made, he should not be admitted under it to a right in such reserves.'

"20. This Resolution seems to have escaped Mr. Ebden's notice. It was no doubt in the hands both of the Revenue Commissioner, N. D., and of the Collector of Thána soon after the date which it bears, and it probably accounts for the fact that the Collector never made the threatened inquiries into the forest rights of those inámdárs whose original sanads did not in distinct words convey to them a proprietary title. If he was satisfied that a forest was included in the area within an inámdár's occupation, both the above Government Resolution and the Summary Settlement Act gave the inámdár a perfect title to that forest.

"21. With reference, therefore, to the second question which I have set myself to answer (*supra* paragraph 9) I am of opinion that the Collector's reservation of a right of inquiry and decision into forest claims was unnecessary and unauthorized, and therefore void, and that the kabuláyat taken from an inámdár before any such decision was passed was therefore good and binding, if the forest to which it related was within his holding and not a distinct forest reserve admittedly belonging to Government.

"22. I may add that even had my opinion as to the forest-rights of inámdárs under a summary settlement been other than it is, I should have felt great difficulty in advising Government that they might ignore and set aside agreements which were executed twenty years ago and which, as I have said above, have probably been acted upon in the interval more than once."

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*Opinion of the Advocate-General on the Forest rights of certain Inámdárs in the Thána Collectorate.*

"Before proceeding to categorically answer the several questions contained in the letter No. 3854 of 1883, Revenue Department (19th May last), from the Under Secretary to Government to the Solicitor to Government, it will be well to draw attention to the provisions of the Summary Settlement Act (Bombay Act VII of 1863).

"The Act recites that it is expedient to provide with certain exceptions for the summary settlement

of all claims to hold land wholly or partially exempt from the payment of land revenue and

"Section 2, clause 1, enacts that when the holders (holder is defined as the person who by himself or his tenants, &c., is in possession) of lands (except, &c.) held either wholly or partially exempt from the payment of land revenue, shall consent to the terms and conditions thereinafter described, it shall be lawful for the Governor in Council to finally authorize and guarantee by sanad the continuance in perpetuity of the said land to the holders, their heirs and assigns.

"Section 6 enacts that the lands so continued in perpetuity shall be the heritable and transferable property of the holders, their heirs, &c., and be continued in perpetuity at a fixed annual payment to Government.

"Section 9 enacts that, in order to ascertain whether a holder desires to accept the settlement, the Collector, &c., shall serve him with a notice calling upon him to state whether he is willing to accept the settlement or whether he demands an enquiry into his title, and clause 8, that if the holder makes no answer for six months stating that he declines the settlement, &c., he shall be deemed to have dispensed with enquiry and the lands shall be dealt with under Sections 2 and 6.

"Section 10 enacts that if a holder claims an enquiry, then enquiry shall be conducted under the rules enacted—Clause 2, that all land held in excess of that by which title is established, shall be fully assessed.

"It is to be observed upon these provisions that the benefit of the Act is to be given to such holders, *i.e.*, persons in possession, as consent to the terms and conditions of the Act, in preference to being obliged to prove their title to exemption, and there is to be no enquiry into title save when the holder demands such enquiry.

"The sole question is the fact of occupancy, and clause 2 of Section 10 shows that, save where there is an enquiry into title, the right to occupancy is not a subject of enquiry.

"Government in my opinion in their Resolution No. 3988 of 14th October 1862 @ 64 (referred to in paragraph 19 of Mr. Naylor's report 531 of 1883) took a perfectly correct view of the Act and were quite right in laying down in the 2nd paragraph of that Resolution that 'claims to trees will, therefore, turn upon the fact whether the inámdár was exercising, over the lands in which the trees are situated, rights of occupancy. If he was, his right to the trees should be admitted.'

"So where the fact of occupancy exists there is no enquiry into the occupant's rights—if he occupies forest land there is no enquiry whether under the terms of his sanad or otherwise he is entitled to the ownership of the forest or not.

"And thus the foot-notes to the notices referred to in Mr. Ebden's letter reserving the question of the ownership of the forest until inspection of the sanads are not in accordance with the Act.

"I now proceed to answer the questions put in the Under Secretary's letter.

I. Is it consistent with the Summary Settlement Act to make an enquiry for the purpose of determining whether forest land forms part of the holding of an Inámdár and in his possession?

If 'an enquiry' in this question means an enquiry at which the inámdár is to attend and by which he is to be bound, I think such an enquiry is inconsistent with the Summary Settlement Act, for there is no provision regarding such an enquiry, nor is there any means for making the enquiry binding upon the inámdár.

"The only enquiry contemplated by the Act is that under Section 10, where the inámdár claims an enquiry, and under clause 2 of that section a full assessment is leviable on all land found upon such enquiry to be held in excess of that to which the title is established.

"The Act does not contemplate that there would be any question respecting the area of the holding.

"Certainly, and the effect is that the ownership in the soil and trees of the forest referred to in A. under the provisions of the Act become the absolute property of the inámdár.

II. Does a kabuláyat in form A. constitute by itself a contract binding on Government?

"I should consider it unlikely that any kabuláyat was executed without any notice under Section 9 of the Act.

III. When such a kabuláyat was executed prior to the issue of the notice of settlement and when the notice of settlement issued subsequently reserved the question of forest rights, must the settlement be held to have extended to the forests, or is it still open to Government to enquire whether the forest land was in the possession of the inámdár and formed part of his holding at the time of the settlement? Would the burden of proving the exercise of rights or possession lie on the inámdár?

"And I have already pointed out that where the forest was in the occupancy of the inámdár, any reservation in the notice of the question of forest rights was *ultra vires* of the Act.

"Whether a preliminary notice under Section 9 was given or not, would not affect the validity of the kabuláyat, and the kabuláyats in my opinion would be binding upon Government for the whole area mentioned in them, whether forest or not; and I think it is not now open to Government to enquire whether the forest land was in the possession of the inámdár and formed part of his holding at the time of the settlement.

"A contract can only be rectified when through fraud or mutual mistake of both parties it does not truly express their intention [Specific Relief Act I of 1877, Section 31]; and a contract is void only where both parties to it were under a mistake as to

an essential matter of fact; it is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact [Indian Contract Act IX of 1872, Sections 20 and 22].

"No fraud is alleged on the inámdár's part; the utmost that can be said is that Government officials were mistaken as to area in the inámdár's holding.

"No kabuláyat has been granted for Maniavli, but here as in all other cases the question is, what is the area of the holding; for that area the inámdár would be entitled to the summary settlement with its consequent advantages, and if that area comprised the forest, the subject of the decision of the decree, the inámdár would be entitled to the summary settlement in respect of that forest notwithstanding the High Court's decree on the construction of the sanad.

IV. Does the entry of the words Sabandh Gaon (entire village) in the notice of settlement have the effect of extending the settlement to the forest lands notwithstanding any reservation which may be made regarding such land? The High Court in their decree No. 9 of 1868 rejected the Maniavli inámdár's claim to forest rights on the ground that the sanad did not convey the soil (*vide* entry No. 42 in Mr. Ebden's list among the papers) though in the notice of summary settlement the phrase "Sabandh Gaon" was used.

"If the inámdár was in possession of part only of the village, the entry of Sabandh Gaon in the notice, by mistake, would not bind Government, and the settlement would be for the actual area of the holding. If, however, the holding comprised the whole village, including the forest, the exclusion of the forest by the foot-note to the notice could not deprive the inámdár of his right to the summary settlement in respect of that forest.

"I cannot advise on this limited statement of facts. It is not said whether the inámdár held the forest or not, or whether he accepted the offer of summary settlement, or whether any sanad has been granted.

V. In the case of the village of Khadavli, must the entry of the words 'Sabandh Gaon', without any reference to forests in the notice of settlement, be construed as an extension of the settlement to forest land notwithstanding that Government had previously decided that the inámdárs had no right in the forest land?

VI. Does the unauthorized taking of the kabuláyat, regarding the forest land in Bársangi have the effect of extending the settlement to such land or does it constitute an agreement outside the settlement which is binding on Government?

"Here the kabuláyat has been taken so long ago as February 1875.

"The foot-note to the notice reserving forest rights was, as before stated, *ul ra vires*, and the circumstance that no proof was given that the inámdár held the vahivat of the forest or that his sanad gave no forest rights, cannot affect the validity of the kabuláyat—*vide* my reply to question No. 3.

"It would not appear that any settlement has been made. But it would seem that the inámdár is in possession, and if that be so, notwithstanding his sanad, he would be entitled to the forest under the Act.

VII. If the settlement made regarding the village of Milhe was based on a misapprehension, can the mistake be now rectified?

"Before I could answer this question satisfactorily I must know something more of the facts. It may be that a question had arisen respecting the inámdár's right to the forest and that the Conservator of Forests without definitely deciding upon those rights gave him leave to cut; if so, this would be equivalent to admitting the inámdár's right to possession.

VIII. In the case of Ambitghar and other villages, would the permission to cut given by the Conservator of Forests be held to prove possession of the forest land?

"Act VII of 1878, Section 79, enacts that if Government and any person be 'jointly interested.' I think 'jointly interested' is intended to apply to cases where there is unity of possession by Government and the inámdár of the forest in question, not to cases where (although there is no line of demarcation) it can be said Government is entitled to one portion and the inámdár to the other."

IX. In the case of Sharakati villages in which forest rights in half the villages have been conceded to the inámdár, but where there has been no demarcation, can Government take over the management of the forests under Section 79 of the Forest Act?

(G. R. No. 6674, dated 8th September 1883.)

In cases in which a summary settlement has been made and a kabuláyat has been executed regarding the forests, the right of the inámdar to the forests on the conditions specified in the kabulayat, should be admitted. (G. R. No. 6674, dated 8th September 1883.)

**24.** The rules on which Government have hitherto acted in deciding cases regarding the forest rights of inámdárs in their villages should be adhered to. These rules are (1) that the words "jal, taru, &c." in a sanad give a right to the forests; (2) that the Inám Commissioner's decisions are final; and (3) that the summary settlement gives a right to the forests. (G. R. No. 8185, dated 9th October 1885.)

**25.** Under the Act, inámdárs who have accepted the summary settlement are entitled to all rights, including forest rights, over all lands in their holding at the time of the summary settlement. Their liabilities are settled either (*a*) by the assessment then existing, (*b*) by special agreement or (*c*) by subsequent assessment, unless (*d*) any part of the land is so exceptional in its character that it cannot be assessed, and in that case it is left (§ 6 (2) B. VII. 1863) to the discretion of the Revenue Officers who, however, if they exercised such discretion and assessed the land, assessed it once for

all. (L. R. No. 1338, dated 15th December 1888; *vide* G. R. No. 2646, dated 6th April 1889.)

**26.** No agreements to pay quit-rent on the value of forest cuttings should be taken from Fût Inámdárs to whose holdings the summary settlement has been applied and whose forest lands have been assessed for the purpose of that settlement, and in the case of Fût Inámdárs who have already executed such agreements, no charge in respect of quit-rent payable under the agreements should be levied, when the summary settlement has actually been applied to their forest lands. (G. R. No. 2646, dated 6th April 1889.)

**27.** The following rules proposed by Mr. Gordon, Collector of Thána, for assessing forests in inám villages in the district for the purposes of the summary settlement were approved by Government:—

(1) One-third of the produce being first deducted for the cost of conservancy, the inámdár will pay to Government one-eighth of the remainder of the produce whenever he cuts his jungles.

(2) The inámdar will report to the Collector beforehand the kind of wood he is about to fell and the duration of the felling.

(3) The inámdár will give passes according to such orders as may be issued by the Collector. Wood sent without a pass may be dealt with as Government wood.

(4) The inámdár will show the *bonâ fide* receipts of the forests, and will keep such accounts as he may be ordered to keep.

(G. R. No. 254, dated 23rd January 1865.)

**28.** Nothing is said in Rule 2 of Section 6 of Act VII of 1863 about calculating the assessment on the value of the wood cut, and it is well known that the agreements (kabuláyats) taken from many inámdárs under Government Resolution No. 254, dated 23rd January 1865, binding the inámdárs to pay one-eighth of the proceeds of the timber in their forest when cut, were executed not in compliance with any of the provisions of the Summary Settlement Act, but in order to obviate the necessity of determining under Rule 2 of Section 6 of the Act the quit-rent to be paid by the inámdars to Government in respect of their forests and they are, therefore, *contracts outside the Act.* (L. R. No. 1265, dated 29th September 1885; *vide* G. R. No. 8640, dated 24th October 1885.)

**29.** By a summary settlement an inámdár, whatever his rights before, becomes by virtue of the proprietary right in the soil which such settlement confers, entitled to all forest rights over all lands at the time of such settlement in his *holding.* When a summary settlement has taken place, the right to the trees does not depend on any mention of the trees or any expressed intention to give or retain the control over them, but solely on

the question whether the trees stand within the area to which the summary settlement applied. (L. R. No. 368, dated 6th April 1889; *vide* G. R. No. 5572, dated 11th August 1890.)

**30.** Inámdárs whose titles had been adjudicated before the Summary Settlement Act became law, and who have since agreed under that Act to pay a nazrána of one anna in order that their holdings may become their transferable private property, are to be deemed to have full proprietary rights as inámdárs to whom a summary settlement has been applied. (L. R. No. 31, dated 6th January 1885; *vide* G. R. No. 539, dated 19th idem.)

**31.** The decision of the question whether judi can be levied from inámdárs on the proceeds from the sale of such minor produce as leaves of apta, temburni and pallas trees, hirdas, shikakai, &c., growing in their forests must rest in each case on the terms of the agreement executed by the inámdar, and a general rule cannot be laid down without regard to the agreements; but when an inámdár has agreed merely to pay judi on timber or on "cuttings," judi cannot be levied on profits derived from minor forest produce. (G. R. No. 6632, dated 8th September 1883.)

**32.** Section 40 of the Land Revenue Code is inapplicable to lands held for service, which are 'alienated' and not 'unalienated' lands.

The former portion of No. 10 of the Joint Rules applies in every village in the Násik District into which a survey settlement was introduced during the period when that rule was in force. But as the rule is relied upon as conveying a grant or concession by Government, it should be strictly construed in favour of the State, and the words 'proprietors of inám, judi and mirás lands' may reasonably be taken to mean persons having proprietary rights in such lands. The use of the word 'proprietors' in such a context is unusual, and unless it was intended by using it to lay stress upon the possession of proprietary right, it is not easy to account for the more ordinary words 'holders' or the more natural terms 'inámdárs', 'mirásdárs,' &c., not having been employed. Government may fairly claim that Joint Rule No. 10 merely acknowledged the right over trees possessed by proprietary inámdárs, which has since been frequently decreed by the Civil Courts.

*Primâ facie* lands held for service are not held under a proprietary title; and unless the holders hold under a title-deed which confers proprietary rights in express terms, they are not entitled to the timber on their lands or to forest rights.

(L. R. No. 1639, dated 20th December 1886; *vide* G. R. No. 419, dated 17th January 1887.)

**33.** The distinction between a holder of service lands and an ordinary occupant is clear. Service tenure is a privileged tenure, and the extent of the

alienation conveyed in the privilege is governed by the general rules which do not presume cession of forest rights in the absence of proof. Government can disallow altogether the cutting of trees in service lands or can permit it subject to such conditions as they may think fit to impose. (G. R. No. 5987, dated 6th September 1888.)

**34.** In those villages in which the service grant was made by Government, prior to the alienation of the village to the inámdár, and thus excluded from the inám to the latter, the right to the trees in such service lands would undoubtedly vest in Government, while in the villages where the service grant was subsequent to the alienation of the village, such right must be considered to vest in the inámdár. (G. R. No. 7674, dated 17th November 1888.)

**35.** The proposals made by the Divisional Commissioners in their following report No. 3497, dated 8th November 1889, should be generally acted on. Whatever trees are reserved in the case of ordinary occupants should be reserved also in those service lands to which a settlement converting them into private property had not been applied :—

"Government Resolution No. 5987 of 6th September 1888 calls for the opinion of the Commissioners on the question of inámdárs' rights to trees in service holdings, other than those to which Gordon's settlement has been extended. All district officers' watans, however, which have not fallen under Gordon's settlement, have either already come under some other analogous non-service settlement (*e. g.*, the several settlements in Gujarát) or will eventually do so (there are only a few stray cases of the latter kind where a non-service settlement is delayed). Inámdárs' rights in the case of all such holdings will necessarily be governed by the terms of the settlement in each case. All district hereditary officers' watans are, therefore, excluded from the scope of the present enquiry. The question will affect only the holdings of—

I—Village servants useful to community comprising (*a*) those whose services, though formerly of use, are not now required; and (*b*) those whose services are still useful to the community, such as the village carpenter, potter, &c.

II—Village servants useful to Government.

"2. Holdings coming under Class I, head (*a*), have had a quit-rent of eight annas in the rupee imposed upon them, and have been converted into private property. The inámdárs of all such holdings would, therefore, have the same complete right over trees as the holder of any personal inám land.

"3. Holdings under Class I, head (*b*), have also been subjected to a quit-rent of four annas in the rupee, but they are still regarded as *service* watans, and are continuable only so long as service required by the community is performed. As soon as the land ceases to be held for such service, it is liable to be resumed by Government (Government Resolution No. 6310 of 25th August 1883). Resumption, however, has been held to mean only the levy of full assessment; possession is not to be disturbed in case of old alienations (Government Resolution No. 656 of 23rd January 1885). So that even where such land has been alienated, the holder retains the right to be in occupation subject only to the payment of full assessment. His right to trees should not, consequently, be held in any way inferior to that of an ordinary survey occupant, and we find that in disposing of a reference from the Panch Mahál District, in connection with the question of the

right to trees on the lands held by this class of village servants, Government were pleased to lay down the principle that these village servants had exactly the same rights in the land as other occupants have in lands occupied by them (Government Resolution, Revenue Department, No. 3876 of 21st May 1883).

"4. We are aware that a different ruling has been laid down on this question in Government Resolution No. 7633 of 9th November 1887, but we are of opinion, for the reasons above given, that the former ruling (Government Resolution No. 3876 of 21st May 1883) is not only more liberal but more equitable.

"5. The only class whose claims remain to be considered are 'village servants useful to Government.' On this subject no distinct orders would appear to have been passed, prior to the issue of Government Resolution No. 419 of 17th January 1887, which lay down the principle that '*primâ facie*, lands held for service are not held under a proprietary title.' The correctness of this principle can admit of no question. Whether the lands are held by watandárs and are continuable hereditarily, or whether they are held merely as the remuneration of non-watandári servants, they are absolutely the property of Government, though in the case of watan lands their occupation is subject to the provisions of the Watan Act.

"6. Admitting these facts to the fullest extent, however, we are of opinion that no good grounds can be shown for treating this useful class of village servants with less liberality than the rest in the matter of their rights over the trees standing on their service lands. Most of these lands are held hereditarily; all of them are inalienable; and as shown by Mr. Younghusband, Assistant Collector of Ahmedabad, in his report No. 737 of 8th November 1888, the temptation which exists in the case of ordinary survey occupants of throwing up the land after denuding it of the timber standing thereon does not exist in the case of these holdings. The land, moreover, being held by the same family from generation to generation the trees in almost all cases have been planted and reared by the present holders of the land or by their ancestors. It is reasonable, therefore, that such benefits as arise from the trees where productive should also go to the holders.

"7. We would further submit that while the ordinary survey occupant pays a certain amount of assessment for the land he occupies, the village servant renders service (in return for which that assessment is foregone), the only difference being as above pointed out that whereas the survey occupant can throw up his land after removing all the trees standing on it, the village servant cannot do so without losing his hereditary service, *a sacrifice that has never yet been made to our knowledge*. We fail to see, therefore, why any distinction should be made between rights enjoyed in return for a certain amount of assessment and those enjoyed in return for service.

"8. We beg to submit reports from the Collectors in the three Divisions, which indicate a general concurrence on their parts in the views above expressed."

(G. R. No. 9578, dated 19th December 1889.)

**36.** Trees in lands held for service without proprietary right could not be claimed *as of right* by the holders of the land either (*a*) as proprietors, or (*b*) as occupants. Rights to the trees might be conceded by Government, but could not arise till the concession was actually made, and such concession would not be complete till communicated to the persons in whose favour it was made.

Section 40 of the Land Revenue Code is wholly inapplicable to trees in uncommuted service lands.

The right to all trees, &c., wherever growing (except the property of individuals or aggregates of individuals) vests in Government under Section 41 of the Code, and that section contemplates directions being given by Government from time to time as to their preservation and disposal. Apparently, therefore, the directions of Government should take the form of executive orders from time to time, not as admitting any rights, but as authorizing concessions. Any orders so made will have legal effect under Section 41 as authorizing action taken under them, but will be at any time revocable until acted on. There is no provision of law requiring Government to notify such orders in any particular way. (L. R. No. 268, dated 3rd March 1890; *vide* G. R. No. 2156, dated 24th idem.)

**37.** The orders passed in Government Resolution No. 9578, dated 19th December 1889, have been modified to the following extent. Watandárs who still perform service are allowed to cut down trees in their holdings with the permission of the Collector first obtained, which the Collector may refuse if he sees good grounds for doing so. An executive order should be issued to Collectors that where the custom is for the land to pass from an occupant to his natural heirs independently of the watandár who actually performs service, the permission should be given, but that where the land passes with the office and the holder enjoys only a temporary usufruct, permission should only be given for good reasons such as that the trees are ready to fell, damage the crops, or the like. The rule should be that

(*a*) Occupants of service holdings may, with the previous permission of the Collector, cut any trees standing in their holdings.

(*b*) The Collector shall not, except for express reasons, to be recorded in writing, refuse permission unless the trees be reserved at the survey, or form portion of sacred groves, or are road-side or other trees useful to the community, and whose destruction would be a public loss.

(*c*) In the case of an application to cut isolated teak or other reserved trees, the Collector may grant them on payment of their estimated value. Where a permission to cut several of such trees is applied for, the application should be disposed of by the Conservator.

(*d*) Whatever trees are reserved in the case of ordinary occupants should be reserved also in those service lands to which a settlement converting them into private property has not been applied. The occupants of service lands concerned should be warned that the concession now allowed is granted as an act of grace and not as an admission of any right, and that it is revocable at the pleasure of Government.

(G. R. No. 6376, dated 9th September 1890.)

**38.** The following High Court's judgment in Appeal No. 45 of 1891 from the original decree in the case of *S. J. DeSouza Devino* v. *The Secretary of State for India in Council* was circulated to the officers concerned with reference to Government Resolution No. 9578, dated 19th December 1889 :—

"In this case the Court having found that the land in question was service inám land sent down an issue for determination as to whether, before the issue of Government Resolution No. 9578 of 19th December 1889, the holders of service inám lands had a title to the trees on their lands, and if so, whether they had the right to cut down trees without the permission of the Collector.

"The District Judge has found this issue in the affirmative on two grounds, the first of which is applicable to the particular lands as being in his opinion 'unalienated' land within the contemplation of Section 40 of the Land Revenue Code, V of 1879, and the second applies to all service inám lands. A preliminary objection, however, has now been taken by Mr. Vasudev Jagannath Kirtikar for the defendant that the Civil Courts have no jurisdiction to try the question which is the subject of the issue sent down, as being a 'matter' within the contemplation of Section 4, clause (*a*) of Act X of 1876. It was said that this Court having decided that the land was service inám land and not survey occupancy land as the plaintiff contended, it ceased to have jurisdiction over the plaintiff's claim against Government in respect of the trees, as such a claim would be 'relating to property appertaining to the office of a village officer.' We think that this is the necessary result of the above section. The plaintiff's claim, having regard to our finding and to the definition of 'land' as contained in the Act, undoubtedly 'relates to property appertaining to the office of a hereditary officer'; but it was said indeed that clause (*a*) was only intended to apply to property appropriated to the payment of the officiating member of the family; the expression used, however, is 'hereditary officer' and not the persons performing the duties of the 'hereditary office' to which by the Hereditary Offices Act III of 1874, the distinct denomination is given of 'officiator' and by which we should expect him to have been referred to in Section 4, clause (*a*) of the Act of 1876; had the intention been, as appellant contends it was, to confine the term 'property' to his remuneration. We feel, therefore, constrained to hold that the Court by deciding the land was service inám land ceased to have jurisdiction over the plaintiff's claim, and we must, therefore, reject the claim on that account with costs."

(G. R. No. 4555, dated 4th June 1893.)